

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)	Art Unit: 1645
)	
Jan Clair Nielsen)	Examiner: GANGLE, B.
)	
Serial No.: 10/562,421)	Washington, D.C.
)	
Filed: May 17, 2006)	November 30, 2010
)	
For: INITIATION OF)	Docket No.: NIELSEN=6A
FERMENTATION)	
)	Confirmation No.: 5536

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S i r :

1. We wish to call to the PTO's attention that the preliminary amendment of May 17, 2006 was relative to the claims that existed in the international phase as a result of the response to first written opinion filed Aug. 29, 2005. A courtesy copy of the latter is enclosed.

The request to enter the national phase did not mention the response to first written opinion and thus neither explicitly required that they be used as the claims on national stage entry, nor explicitly required that the international claims as filed on the international filing date be used instead.

Until now, both the attorneys of record and the examiner overlooked the discrepancy between the preliminary amendment of May 17, 2006 and the international claims as filed on the international filing date.

Plainly, even if the amendments should have been relative to the latter, the error does not affect the substance of the prosecution. The allowed claims would still have been allowed, and it doesn't matter anymore how they were numbered during prosecution -- especially since the examiner would

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renumber them after allowance pursuant to 37 CFR 1.126 and MPEP 1302.01.

However, for the sake of good order, we thought that the matter should be brought to the examiner's attention. The examiner can amend the case, should that be necessary, without being constrained by 37 CFR 1.121.

2. We take this opportunity to note that while the allowed claims were agreed to by applicant, applicants remain of the view that they are entitled to broader claims, and hence the amendments were without prejudice to pursuing previously cancelled or otherwise broader claims in a continuation application.

Respectfully submitted,

BROWDY AND NEIMARK, P.L.L.C.
Attorneys for Applicant

By: 

Iver P. Cooper
Reg. No. 28,005

Enclosure

-Response to First Written Opinion

1625 K Street, NW

Washington, D.C. 20006

Telephone: (202) 628-5197

Facsimile: (202) 737-3528

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